

@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2385 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMCHANDRA RAMSEVAK YADAV

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE and MS. BANNA DUTT for Petitioner
MR MA BUKHARI, LD.AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

The petitioner-detenu came to be detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, on

March 25, 1999, in exercise of powers under section 3(1) of the PASA Act.

2. In the grounds of detention, the detaining authority took into consideration seven offences registered against the petitioner under the Bombay Prohibition Act. The authority also took into consideration statements of two anonymous witnesses whose identity has not been disclosed in exercise of powers under section 9(2) of the PASA Act. While exercising this powers, the detaining authority recorded a subjective satisfaction about the correctness and genuineness of the statements and fear expressed by the witnesses qua the petitioner. The authority recorded a subjective satisfaction for the need for the exercise of powers under section 9(2) of the PASA Act. The authority also considered the possibility of resorting to less drastic remedy but came to a conclusion that the activities of the petitioner are detrimental to the public order and, therefore, he is required to be prevented immediately from pursuing his illegal activities and, therefore, detention under PASA is only remedy available with the detaining authority.

3. The detenu/petitioner challenges the order of detention on various grounds by this petition.

Ms.Banna Dutt, learned advocate appearing for the petitioner has restricted her arguments only to the ground that the statements of the witnesses were recorded by the sponsoring authority on 23.3.99 and 24.3.99. Both the statements were verified by the detaining authority on 25.3.99 and the order was passed on that very day. She submitted that there was no time lag to facilitate the detaining authority for arriving at a subjective satisfaction for the need for exercise of powers under section 9(2) of the PASA Act. This has resulted into infringement right of the petitioner of making an effective representation. The order, therefore, may be quashed and set aside by allowing the petition.

4. Mr.M.A.Bukhari, learned AGP appearing for the respondents has opposed this petition. He submitted that the authority has passed the order after considering all relevant facts and material before it. The subjective satisfaction recorded by the detaining authority may not be objectionable judge by this court and the petition therefore be dismissed.

5. Factually, there is no dispute between the parties regarding the fact that the statements were

recorded on 23.3.99 and 24.3.99, both the statements were verified on 25.3.99 and the order was passed on that very day.

6. What is now required to be considered as to whether exercise of powers under section 9(2) of the PASA Act by the sponsoring authority after recording the subjective satisfaction can be said to have been exercised on wish of a genuine subjective satisfaction.

7. For arriving at a subjective satisfaction, the detaining authority has to verify the correctness of the statements made by the witnesses and the genuineness of the fear expressed by the witnesses qua the petitioner in respect of person and property because of which they claim that they did not lodge a complaint in respect of those unregistered offences. Before exercising the powers under section 9(2) of the PASA Act, the authority has to bear in mind that non-disclosure of the identity of the witnesses would infringe the right of the detenu of making an effective representation. The powers under sec.9(2) of the PASA Act are required to be exercised in public interest. The authority has, therefore, to strike a balance between the public interest on the one hand and right of the detenu on the other. This entire exercise will call for a close consideration of the material before the detaining authority. This would, naturally, require time. In the instant case, this entire procedure is completed on the same day. The affidavit-in-reply does not state that when the proposal was received by the detaining authority, when the exercise was started, when the witnesses were called, what other material was considered and when the grounds of detention were prepared and when the order was passed. In this view of the matter, when the verification and the order are on the same date, if the decision in the case of Kalidas C.Kahar (supra) is considered, the order of detention would stand vitiated. In that case, the order was passed on the next date of the verification of the statements and still the Division Bench held that there was no time lag for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under section 9(2) of the PASA Act. In the instant case, the entire exercise is carried out on 25.3.99. It cannot be said that there is a genuine exercise of powers under section 9(2) of the PASA Act. The detenu's right of making an effective representation having been infringed. The detention would stand vitiated. The petition, therefore, deserves to be allowed.

8. The petition is allowed. The impugned order of

detention in respect of petitioner-detenu Ramchandra Ramsevak Yadav dated 25.3.1999 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, is hereby quashed and set aside. The petitioner-detenu be set at liberty forthwith if not required in any other case. Rule is made absolute with no order as to costs.

(A.L.Dave, J.)

syed/